REMARKS

Reconsideration of this application is respectfully requested. Petition is hereby made for a one-month extension of time to respond to the outstanding Office Action of March 7, 2007.

Claims 1 – 47 are pending in the application. Upon entry of this Amendment, independent claims 1 and 23 will be amended and new dependent claims 48 – 51 will be added.

In the outstanding Office Action of March 7, 2007, the Examiner rejected claims 1 – 47 under 35 U.S.C. §102(b) as being anticipated by Connell. This rejection is respectfully traversed.

Claim 1 has been amended to recite that "the comparison of the weight determined by weighing an item on the first scale and the weights of at least one of the receptacles being used for detecting and correcting system inaccuracies." Claim 23 has been similarly amended to recite that "the data representing the weight determined by weighing an item on the dynamic scale and the data representing the weight of the at least one receptacles is compared to detect and correct system inaccuracies." Support for the amendments to claims 1 and 23 can be found at at least page 3, lines 12 – 20 of the present application's specification.

For a claim to be anticipated by a reference, every element in the claim must be disclosed in the reference. Amended independent claim 1 is not anticipated by Connell

because Connell does not disclose comparing the weight determined by weighing an item on the first scale and the weights of at least one of the receptacles to detect and correct system inaccuracies, as now recited in amended independent claim 1. In addition, amended independent claim 23 is also not anticipated by Connell because Connell also does not disclose comparing the data representing the weight determined by weighing an item on the dynamic scale and the data representing the weight of the at least one receptacles to detect and correct system inaccuracies, as now recited in amended independent claim 23.

Rather, Connell et al. disclose only a method of selectively packaging a product comprising a plurality of items of varying weights, such as chicken parts, the method including the steps of weighing each individual part, sorting each individual part into a selected one of a plurality of holding bins, accumulating a plurality of parts in each bin until a predetermined weight for the parts is reached in a given bin, emptying the parts from such bin, and packaging the parts in an appropriate package. The steps of emptying and packaging the parts in accord with the method of the present invention would be repeated as the each of the plurality of bins is determined to hold the appropriate weight of the product.

As such, independent claims 1 and 23 of the present application are not anticipated by Connell. And because independent claims 1 and 23 are not anticipated by Connell, dependent claims 2 – 22 and 24 – 51, which depend from such claims, are also not anticipated by Connell.

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In the outstanding Office Action, the Examiner also rejected claims 1 – 47 under 35 U.S.C. §103(a) as being unpatentable over PCT International application WO 00/00036 (D1) in view of U.S. Patent No. 3,945,448 to Sellers (D2). This rejection is also respectfully traversed.

Common batching systems use an in-feed conveyor, dynamic scale, output conveyor, plurality of batch receiving boxes, and some means, for example a sweeping arm, to direct items into appropriate batch receiving box.

The problem solved by the method and system described in claims 1 – 51 of the present application is to, *inter alia,* detect and/or correct for system errors which can occur when batching items in such systems. Such errors can include item weighing and counting errors. There are several sources and/or causes of errors in batching system:

• A dynamic scale used in the system drifts over time;

• An item to be batched is accidentally misplaced into a wrong batch. (This could for example be due to a malfunctioning arm.); and

• The weight of an item is reduced on the way from the dynamic scale to a batch receptacle in which the item is placed. (There are many reasons for weight reduction, such as liquid drips from the item, scraps gets separated from the item, *etc.*).

The above list names just a few of the commonly occurring errors which the method and system described in claims 1 – 51 of the present application can minimize.

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Turning to the Examiner's rejection of claims 1 – 47 under §103(a), even if the Examiner properly combined references D1 and D2, the result would still not be the claimed invention.

Reference D1 discloses a method and a system for building up weight-determined batches of foodstuff items delivered from a processing machine, such as a slicer or portion cutter. The problem which D1 attempts to solve is a need to determine more precisely the weight of batches, and to reduce overweight or underweight batches. D1 attempts to solve this problem by the use of two dynamic scales; one before a cutter (input-scale) and one after the cutter (output-scale). A batching apparatus is located downstream from the output-scale. The weight of partial batches in each receptacle is known from a sum of item weights. Items are weighed on the output scale and then directed to an appropriate receptacle. To reduce errors in batching; instead of relying on assumptions or prior knowledge of the weight distribution, a controller calculates a "preferred weight distribution," and then uses this information to control the slicer. To accomplish this, each item is weighed on the input-scale, the sums of the weights in all the receptacles are known, and using this information, a decision is made as to how an item can be cut to minimize overweight batches. The problem solved by D1, therefore, clearly is to reduce overweight batches by adjusting the weight distribution of the items which are batched. However, there is no teaching in D1 as to how to detect and correct system errors, as now recited in independent claims 1 and 23 of the present application.

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Reference D2 discloses a system for package weight control. The system includes a hopper positioned at the end of a conveyor run for receipt of material to be packaged. A weighing means, which supports the hopper, continuously weighs the material in the hopper and generates continuously a digital signal representing the weight being sensed. The hopper is capable of receiving material sufficient in volume to at least equal a desired net weight of product. At least one conveyor is mounted for conveying the material from a like number of feeders disposed at the other end of the conveyor from the end where the hopper is located. Each feeder may dispense substantially similar volumes of material at spaced locations on each conveyor as the conveyors are advanced through predetermined incremental distances. The accumulated weight of the material on each conveyor belt is measured and a first digital signal representing the accumulated weight is generated and stored by a control unit. Each new accumulation on each belt likewise is measured and a second digital signal and so on representative of the accumulation is generated and stored. The weight of the quantity of material of the new accumulation is determined by subtracting the summation of digital signals from that digital signal representing the last summation. A digital signal representing the desired net weight of product to be received by the hopper is generated and stored. The control unit compares the latter signal with the signal representing accumulations as the accumulations are summed and advances the conveyor belt a sufficient distance so that a desired net weight of product is received by the hopper.

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Clearly, a review of the D1 and D2 references reveals that neither reference teaches how to solve the problem solved by the method and system described in claims 1 – 51 of the present application, *e.g.,* detecting and/or correcting system errors which can occur when batching items in such systems, such as item weighing and counting errors.

As such, independent claims 1 and 23 of the present application are not unpatentable over references D1 and D2, either alone or in combination. And because independent claims 1 and 23 are not unpatentable over references D1 and D2, dependent claims 2 – 22 and 24 – 51, which depend from such claims, are also not unpatentable over references D1 and D2.

In view of the foregoing, it is believed that all of the claims pending in the application, *i.e.,* claims 1 – 51, are now in condition for allowance, which action is earnestly solicited. If any issues remain in this application, the Examiner is urged to contact the undersigned a the telephone number listed below.

Respectfully submitted,

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